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IN THE

Supreme Court of the United States

DECEMBER TERM, 1957

No. 674

STANLEY KREGGER,
Petitioner,

vs.

THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN AND APPENDIX

STANLEY KREGGER,
Petitioner.

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vs.

THE STATE OF MICHIGAN,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

Stanley Kregger, petitioner, prays that a Writ of Certiorari issue to review the Order of the Supreme Court of the State of Michigan entered on September 14, 1957 denying Petitioner's Petition for Reconsideration and affirming its Order entered on June 7, 1957 which denied Petitioner's Application for Leave to File a Delayed Appeal from the judgment and sentence of the Circuit Court of Branch County, Michigan.

OPINIONS BELOW

No opinions were rendered by the Michigan Supreme Court or by the Circuit Court for Branch County, Michigan.

JURISDICTION

The Order of the Supreme Court of the State of Michigan denying petitioner's Application for Leave to File a Delayed Appeal was entered on June 7, 1957 and an Order denying a Petition for Reconsideration was entered on September 14, 1957.

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3).

From the final Order of the Supreme Court of the State of Michigan denying a Petition for Reconsideration entered on September 14, 1957, Petitioner has no further appellate remedy under the laws of the State of Michigan.

QUESTIONS PRESENTED

Whether the trial court's charge to the jury dismissing the petitioner's defense of insanity from consideration by the jury, deprived the petitioner of his right to trial by jury and violated his constitutional right to due process of law as guaranteed him by the 14th Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

The due process clause of the 14th Amendment to the United States Constitution which provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
>
> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

I.

PROCEDURAL HISTORY OF THE CASE

On January 29, 1950 Anna Kregger was shot by a gun held by her husband, Stanley Kregger.

On September 21, 1950, the petitioner herein, Stanley Kregger, was found guilty of murder in the first degree in the killing of his wife before a jury in Branch County Court for the State of Michigan and was sentenced to life imprisonment by the Honorable Charles O. Arch, Circuit Court Judge for Branch County, who presided at the trial. Notice of the special defense of insanity was timely made and filed by defense attorneys.

The conviction was appealed to the Michigan Supreme Court and was affirmed.

Petitioner then filed an Application for Leave to File a Delayed Appeal which Application was denied by the Michigan Supreme Court on June 7, 1957 (Appendix 30a-31a). A Petition for Reconsideration was filed and on September 14, 1957 the Michigan Supreme Court denied said Petition for Reconsideration, affirming its Order denying leave to file a delayed appeal (Appendix 32a-33a).

Petitioner has no further remedy for appellate review in the state courts of Michigan.

II.

FACTS MATERIAL TO THE QUESTION PRESENTED

Notice of the special defense of insanity was timely made and filed by defense attorneys on behalf of the petitioner in his trial for murder in the Branch County Court for the State of Michigan.

The trial court dismissed the defense of insanity from the consideration of the jury stating that "no testimony had been introduced on the issue" (Appendix 9a), and instructed the jury as follows on the subject of the defense of insanity (Appendix 9a): Trial Court's Charge is set forth in its entirety in Appendix at end of this Petition (Appendix 2a-22a).

> "At this point I want to pause and say a word about the Special Defense of insanity. Each of you jurors were examined as to whether or not the fact that the Respondent had given notice that he intended to claim that defense would be held against him, the mere fact that he had given that notice. I say to you Members of the Jury no testimony has been introduced in this case on that issue, so you should not give it any further consideration—it is not an element in this case. Dismiss insanity, or notice of plea of insanity from your mind, there was no testimony on it, that is

> not before you to pass upon, and you need not consider it further, it is out of the case, and has no place in your deliberation whatsoever."

However, the facts indicate that there was considerable testimony introduced at the trial in the Branch County Court as it relates to the defense of insanity. We call this Honorable Court's attention to the following testimony which could and should have been considered by the jury on the question of insanity. This testimony is taken from the Settled Concise Statement of Facts (set forth in its entirety in Appendix at the end of this Petition, Appendix 23a-30a), which was agreed upon between the Petitioner and the People of the State of Michigan at the time the Petitioner filed his Application for Leave to File a Delayed Appeal with the Michigan Supreme Court.

There was testimony that shortly before the shooting the health of the petitioner was not good; that when his wife refused to talk with him it made him feel worse and petitioner became nervous and then still more nervous; that he could not eat well or sleep well (Appendix 24a); that he thought his wife did not love him; that he went into the closet of his bedroom and got a gun and said to his wife, "If that is the way you feel about it, I am going to end it all and get out of your way", and that the wife jumped up and took hold of the gun (Appendix 24a).

There was testimony that the petitioner had threatened to commit suicide twice before because he thought his wife did not care about him; that she did not love him (Appendix 27a).

Testimony further shows that a week before the shooting, the wife came to see Dr. Culver; that the wife was very upset, crying and almost hysterical; that as a result of what she told Dr. Culver he went to the Kregger home and

proceeded to make a *mental examination* (emphasis ours) of the petitioner and prescribed treatment and medicine which was taken by petitioner from that day until the day of the shooting (Appendix 25a, 26a, 27a, 28a).

After the shooting, the petitioner wanted to kill himself (Appendix 26a); petitioner was so nervous he could hardly drive his car (Appendix 26a); while going to get the doctor, the petitioner drove off the road (Appendix 26a) and he was too nervous to drive to get the ambulance (Appendix 26a).

There was also the testimony of John Bucholtz, son of the deceased, that he had a conversation with the petitioner at the jail after the funeral, and that he asked the petitioner why he did it and that the petitioner replied he did not know; that Bucholtz asked the petitioner how he did it and again the petitioner replied he did not know; that he asked the petitioner about the gun and again the petitioner did not know (Appendix 28a).

The testimony above set forth was before the jury and was evidence of the mental condition of the petitioner prior to, at the time of, and subsequent to the crime with which he was charged.

The appearance of the petitioner after the shooting, his conversations and declarations before and after the shooting, his appearance while testifying were all material and admissible on the question of his mental condition at the time of the shooting.

III.

FEDERAL QUESTION RAISED BELOW IN TRIAL COURT AND IN THE MICHIGAN SUPREME COURT

A. In Trial Court.

The trial court dismissed the defense of insanity from the consideration of the jury charging there was no testimony introduced in the case on the issue of insanity. This amounted to a partial direction of verdict by the trial court depriving petitioner of his right to trial by jury on his defense of insanity and violating his constitutional right to due process of law as guaranteed him by the 14th Amendment to the Federal Constitution.

B. Michigan Supreme Court.

Petitioner filed Application for Leave to File a Delayed Appeal with the Michigan Supreme Court upon the ground that the trial court erred in its charge to the jury dismissing the defense of insanity from the consideration of the jury thus depriving petitioner of his right to trial by jury and of his constitutional right to due process of law under the 14th Amendment to the United States Constitution.

These grounds specifying error were before the Michigan Supreme Court which denied the Application for Leave to File a Delayed Appeal and denied a Petition for Reconsideration without filing any written opinion.

ARGUMENT

CERTIORARI SHOULD BE GRANTED BECAUSE AN IMPORTANT QUESTION AFFECTING THE RIGHTS OF THE ACCUSED TO TRIAL BY JURY AND DUE PROCESS OF LAW UNDER THE 14TH AMENDMENT IS INVOLVED.

Notice of the special defense of insanity was timely made and filed by defense attorneys.

The trial court dismissed the defense of insanity from the consideration of the jury charging that there was no testimony introduced on the issue of insanity. This charge deprived the petitioner of his right to trial by jury on an issue of fact and further, deprived the petitioner of his right to due process of law under the federal constitution.

Although the trial court charged that there was no testimony introduced on the issue of insanity, a review of the evidence, indicates that there was considerable testimony presented on said issue (Appendix 24a, 25a, 26a, 27a, 28a). This testimony is briefly outlined herein under "Facts Material to the Questions Presented" and said testimony forms part of the Settled Concise Statement of Facts on Application to File a Delayed Appeal, which Settled Concise Statement of Facts appears in its entirety in Appendix 23a-30a, at the end of this Petition.

Testimony as to the mental condition of the petitioner prior to and subsequent to the crime and of his conduct at the time of the crime and within a reasonable period before and after it, was before the jury and was relevant and material evidence to be considered by the jury. *U. S. v. Chisholm* 149 Fed. 284.

The appearance of the petitioner after the shooting, his conversations and declarations before and after the

shooting, his appearance while testifying were all material, pertinent and admissible on the question of his mental condition at the time of the shooting and should also have been considered by the jury in deciding the question of petitioner's sanity had not the Court precluded them from so doing.

The trial court had no authority to decide the effect or sufficiency of the evidence submitted on the issue of insanity. Since notice of the special defense of insanity was timely made and filed by defense attorneys, and since the issue was presented by the evidence, it was the constitutional right of the accused to have the jury determine whether he was criminally responsible. *Deems v. State* (Maryland) 1916, 96 Atl. Rep. 878.

In the case of *Deems v. State, supra,* the court excluded the issue of insanity from the consideration of the jury. The Appellate Court in reversing the conviction said on page 879:

> "The issue of insanity being thus distinctly presented, and the case not being wholly devoid of evidence tending to sustain the theory of the defense, it was the constitutional right of the prisoner to have the jury determine whether he was in fact and law criminally responsible for the act for which he was being tried. *The court is given no authority to decide as to the effect or sufficiency of the evidence submitted to the jury upon such an issue.*" (Italics ours.)

It was the constitutional right of the petitioner to have the jury determine whether he was in fact and law criminally responsible for the act with which he was charged and to have the jury deliberate on all questions of fact including the issue of insanity.

"The constitutional right of the accused to have his guilt or innocence determined by a jury of his peers cannot be denied by the arbitrary exercise of judicial power." *U. S. v. Taylor,* 2 McCrary U. S. 500; 11 Fed. 472; *U. S. v. Battiste,* 2 Sumn. U. S. 240, Fed. Case No. 14545.

Further, the jury had a right to consider the accused's mental state not only as bearing upon his sanity but also in determining whether he was mentally capable of the intent and premeditation necessary to establish the crime of murder in the first degree. Any facts tending to show that the accused was incapable of premeditation or deliberation should have been considered by the jury in determining the degree of his offense. It was the duty of the court to instruct the jury on this question whether requested to do so or not, but the court failed to do so. By depriving the jury of the right to consider the petitioner's mental state, the trial court deprived the accused of his right to trial by jury and violated the right of the petitioner to due process of law as guaranteed him by the 14th amendment to the United States Constitution.

"Every fact which shows or tends to show that the mental or physical condition of the accused was abnormal at the date of the crime is competent." *Underhill's Criminal Evidence,* 4th Ed., Article 306, Page 604, citing among other cases, *U. S. v. Chisholm,* 149 Fed. 284; *People v. Brent,* 11 Cal. App. 674, 106 Pac. 110.

"Every fact of the defendant's life relevant to the issue is admissible in evidence when the defense of insanity, general or partial, is set up." *20 Am. Juris.* Art. 349, page 324.

When the trial court in the instant case took from the consideration of the jury all of the testimony presented on the defense of insanity, it in effect told the jury that the

petitioner's mental condition at the time of the shooting was not to be considered by the jury in reaching a verdict. This deprived petitioner of his constitutional right to have the jury determine all of the facts in the case relative to his guilt or innocence. The jury had the right to make its determination on the defense of his insanity.

The trial court in the instant case in its Charge said (Appendix 9a):

> "Murder is defined as where a person of sound memory and discretion wilfully and unlawfully and unreasonably kills any human being, against the peace and dignity of the People of the State of Michigan, with malice aforethought, either express or implied."

This charge was *immediately* followed by the Court with instructions to the jury telling them:

> "I say to you Members of the Jury no testimony has been introduced in this case on that issue (insanity), so you should not give it any further consideration—it is not an element in this case. Dismiss insanity, or notice of plea of insanity from your mind * * *" (Appendix 9a).

A perusal of these instructions, one immediately following the other, reveals that the court told the jury that in order to constitute murder, the accused must be sane and in the next breath told the jury that the accused was to be considered sane. This had the effect of causing the jury to completely disregard all testimony as it related to whether petitioner was capable of forming a criminal intent. When the jury was told to disregard the question of insanity, it follows that proper consideration was not given to petitioner's ability to form criminal intent. Thus a most essential element of the crime of murder in the first

degree of which petitioner was convicted was never submitted to the jury.

The case of *United States v. Manuszak*, 234 Fed. Reporter, 2d Series, 421, decided on June 19, 1956 by the United States Court of Appeals, Third Circuit, involved a prosecution for theft of goods from interstate shipment of freight for interstate transportation of stolen goods and for conspiracy. Defendant did not dispute that a theft had occurred by merely disclaimed knowledge of the theft. Evidence of the theft was uncontradicted.

The court did not submit the question of the theft itself to the jury but assumed in its charge that the theft had occurred. This was held to be error. In reversing the defendant's conviction, the Court said on page 424:

> "The presumption of innocence to which appellant was entitled demanded that all factual elements of the government's case be submitted to the jury. It is immaterial that the government's case as to the actual theft was uncontradicted. The acceptance of such evidence and the credibility of witnesses is for the jury even though to the court the only possible reasonable result is the acceptance and belief of the government's evidence. *A partial direction of the verdict occurs when the court determines an actual fact and this denies the appellant trial by jury.*" (Italics ours.)

Citing:

> *Ballenback v. United States* (1946) 326 U. S. 607;
> *U. S. v. Gollin*, 3 Cir. 1948, 166 Fed. 2d 123, 125-126;
> *U. S. v. Raub*, 7 Cir. 1949, 177 F. 2d 312, 315-316;
> *Carothers v. U. S.*, 5 Cir. 1947, 161 F. 2d 718, 722.

The *Manuszak case* protects the petitioner's right to trial by jury holding that the court may not determine an actual fact even though the government's case as to said fact was uncontradicted. The determination of said fact, though uncontradicted, should have been submitted to the jury and said determination amounted to a partial direction of verdict.

Apply the Manuszak case to the instant case, we submit that the Court by its charge in the instant case made a determination of petitioner's sanity and his mental capacity to form the premeditation necessary for murder in the first degree. This determination amounted to a partial direction of verdict and deprived the petitioner of his right to trial by jury.

In *Ballenbach v. United States, supra,* this Supreme Court reversed the judgment of the lower court and held as error the trial court's charge to the jury that:

> "possession of stolen property in another state than that in which it was stolen shortly after the theft raises a presumption that the possessor was the thief and transported stolen property in interstate commerce but that such presumption was subject to explanation and must be considered with all the testimony in the case."

Justice Frankfurter delivered the opinion of the Court, saying on page 615:

> "We cannot treat the manifest misdirection in the circumstances of this case as one of those 'technical errors' which do not affect the substantial rights of the parties and must therefore be disregarded."
>
> * * * * *
>
> "In view of the place of importance that trial by jury has in our Bill of Rights, it is not to be

> supposed that Congress intended to substitute the belief of appellate judges in the guilt of an accused, however, justifiably engendered by the dead record, for ascertainment of guilt by a jury under appropriate judicial guidance, however cumbersome that process may be."

In *United States v. Raub, supra,* Raub was convicted of attempting to evade payment of income and victory tax by filing fraudulent tax returns, and he appealed. The trial court said the only issue for the jury was that of intent. Conviction was reversed on appeal for the reason that the trial court's instructions to the jury were erroneous in that it amounted to a direction of the verdict on the issue of fraudulence and so affected the substantial rights of the defendant as to warrant the appellate court in noticing it in spite of his failure to call it to the attention of the trial court.

The Court said on page 315:

> "It appears to be generally established now—Rule 30 notwithstanding, in criminal cases involving life or liberty of a defendant, an appellate court may notice plain and seriously prejudicial error in the instructions, even though it was not called to the attention of the trial court."

Williams v. U. S., 76 U. S. App. D. C. 299, 131 F. 2d 21;
Cave v. U. S., 159 F. 2d 464;
U. S. v. Monroe, 164 F. 2d 471.

Further on page 316:

> "We think the fair interpretation of the instructions is that they assumed that there was only one issue to be decided by the jury, namely that of intent, and in effect, they *amounted to the direction of the verdict on the issue of falsity and fraudu-*

lence. But this was not conceded by the defendant, and *he was entitled to have the jury's determination instead of having the issue taken from it.*" (Italics ours.)

"We think this error so affects the substantial rights of the defendant as to warrant our noticing it in spite of his failure to call it to the attention of the trial court." *U. S. v. Ward*, 168 F. 2d 226; *Morris v. U. S.* 156 F. 2d 525.

In *Carothers v. United States supra*, the Court on appeal held that error in a charge which assumes a fact in issue material to the defendant's conviction is prejudicial even if the evidence clearly establishes the assumed fact, for in such cases *the court may not direct a verdict as to any fact.* (Emphasis ours.)

The Court said on page 722:

"This assumption that the price had been established as a matter of law at less than the price the indictment charged defendant with receiving, put the judge in the position of deciding a fact issue material to defendant's conviction, instead of submitting it to the jury for its determination, and thus deprived the defendant of his constitutional right to trial by jury."

In *United States v. Gollin, supra*, the trial court instructed the jury on page 125:

"Under this state of facts you are instructed that as a matter of law the truck was moving in interstate commerce at the time it is contended by the government that the beer was stolen therefrom. That is a matter of law. The facts are not disputed and that constitutes the jurisdiction of this Court and is a matter for the court to determine and not a matter for the jury to determine."

This instruction was held to constitute prejudicial error as tantamount to a partial directed verdict, even though the defendant did not dispute government witnesses who testified on the issue of interstate commerce and offered no evidence thereon.

It was the constitutional right of the petitioner in the insfant case to have the jury determine whether petitioner was in fact and in law criminally responsible for the act for which he was being tried and the court had no authority to decide the effect or sufficiency of the testimony on the issue of insanity but should have presented said testimony to the jury. The determination of petitioner's insanity was pertinent in deciding whether he had the mental capacity to premeditate and form the criminal intent necessary to establish the crime of murder in the first degree.

Further, the Court told the jury that in order to constitute murder the accused must be sane but the court did not leave to the jury the question of whether petitioner was sane, telling them instead to dismiss the defense of insanity from its consideration.

The trial court's charge to the jury amounted to a partial direction of verdict and deprived petitioner of his right to trial by jury on all issues of fact and violated petitioner's right to due process of law guaranteed him by the 14th Amendment to the United States Constitution.

CONCLUSION

For the reasons stated, petitioner respectfully requests that this Petition for a Writ of Certiorari to the Supreme Court for the State of Michigan be granted.

Respectfully submitted,

STANLEY KREGGER,
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STANLEY KREGGER,
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APPENDIX

STATE OF MICHIGAN—In the Circuit Court for Branch County

People of the State of Michigan
v.
Stanley Kregger
} File No. 1902

CHARGE OF THE COURT

Members of the Jury:

If I may have your undivided attention at this time the Court will endeavor to instruct you as to the law it deems applicable to this case, and I do ask your undivided attention because it is extremely important that you know what the law is governing this case, then when you get into the Jury Room you will be able to apply the facts to the law as the Court gives it to you. And as I have said during the trial of the case, and will say again, you are the sole judges of the facts, and the Court is the sole judge of the law.

Before I go into the charge further I want to say this: so that you may know a little about our program today. Two members of our Jury whom I am advised by our good Clerk, have been so unfortunate as to have death in the family, which of course we did not know about when choosing, and our case has progressed very rapidly in the last couple of days, and I feel in view of the fact you Jurors have been cooperative with the Court, officials and attorneys, that we should take a recess long enough to allow these two gentlemen to attend the funeral. So I will deliver my Charge, then send you to the Jury Room to deliberate, and if you reach a verdict soon the matter will take care

of itself; otherwise I will let you go on and deliberate until one o'clock, then we will take a recess from one to three and then continue your deliberations until you reach a verdict, that will give those two gentlemen opportunity to attend the services. So if you are not called in until one o'clock you will understand why; however if you reach a verdict soon, then that won't apply. If you do not reach a verdict before one o'clock, we will take our noon recess at that time, the Jury will go your own way, get your own lunch wherever you care to, and come back at three o'clock and continue your deliberations until you have reached a verdict. I speak of it now because I might forget that later on.

May the record show that the defense counsel have this morning handed up some requests to charge. They are late according to the rules of practice, but the Court is inclined to accept them anyway, even at this late hour. I will say to defense counsel I have read them over and on the whole I have no quarrel with them; I prefer however to give them in my own words and to elaborate a little bit more on those particular subjects than you gentlemen have in your requests.

Also one has been handed up by the Prosecuting Attorney.

My Charge, by necessity, will be a little bit long and if Counsel will bear with me and listen to the charge, at the conclusion I shall give you an opportunity to make further suggestions you may care to do, in the event I should happen to overlook anything.

Members of the Jury: The Information filed in this case which is the case of the People of the State of Michigan vs. Stanley Kregger, as you already know. This Information reads in part as follows:

"Harold F. Bristol, Prosecuting Attorney in and for the County of Branch, for and in behalf of the People of the State of Michigan, comes into said Court, in the May, 1950 term thereof, in the year one thousand nine hundred fifty and gives the Court here to understand and be informed that one Stanley Kregger late of the City of Coldwater, in the County of Branch and State of Michigan, heretofore, to-wit: on the 6th day of February, A. D., 1950 at the City of Coldwater in the County of Branch aforesaid then and there being, then and there feloniously, wilfully and of his malice aforethought, did kill and murder one Anna Kregger. Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan." And signed by: "Harold F. Bristol, Prosecuting Attorney in and for County of Branch, State of Michigan."

Members of the Jury, in committting this case to you the Court desires to admonish you as to the important issues involved. This is an important case both to the People of the State of Michigan and to the Respondent Stanley Kregger. The court desires you to fully understand the responsibilities upon you of arriving at your verdict in this case. No more solemn and weighty duty devolves upon a citizen of this state than to pass upon the issues involving the liberty of a fellow citizen. On the one hand you should remember that a failure to perform your duty by which a crime, if one is shown, might go unpunished and a criminal escape the penalty of his crime, that cannot be corrected by a new trial, for the law cannot twice put a defendant in jeopardy for the same charge. The State demands, and has a right to ask at your hands the full performance of your duty in the enforcement of the law, and no notions of

mere sympathy and sentimentality should cause you to hesitate in the full performance of your duty. And, on the other hand, you should never for a moment forget your duty to secure and protect every right guaranteed by the Constitution and our law to the defendant. You should not allow any outside influence or pressure or indignation or sympathy for the deceased, or his relatives, to influence you in finding a verdict in this case. You should fairly, impartially, coldly and dispassionately examine the evidence in this case, and after carefully and fully examining and considering it, render your verdict under the law and the evidence, that full and complete justice may be rendered thereby between the state and the defendant, Stanley Kregger.

In this case the People's claim is very simple, namely: that Stanley Kregger with a shotgun shot and killed and murdered his wife Anna Kregger. That is very plain.

After it is all boiled down, after all this testimony is in, Mr. Kregger claims he is not guilty of the offense, and claims it was an accident, that he did not intend to kill his wife. He asks you to bring in a verdict on his behalf of not guilty.

The Statute which applies to these various offenses, the original offense of murder, murder in the first degree, murder in the second degree, manslaughter, are as follows: Rather short—I would like to read them to you at this time before I go any farther in my charge.

All murder which shall be perpetrated by means of poison, or lying in wait, or any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetrate any arson, rape, robbery or burglary, shall be murder of the first degree, and shall be punished, etc. All other kinds of murder shall

be murder of the second degree, and shall be punished, etc. Any person who shall commit the crime of manslaughter shall be guilty of a felony, punishable, etc.

Our statutes provide a punishment for but do not define manslaughter, and have left it as at common law. Manslaughter is defined as the unlawful killing of another without malice, express or implied.

Now Members of the Jury, I am not saying to you, and certainly am not attempting to say to you, that either the claim of the People or the claim of the Respondent is true and correct, as that is for you to determine from all of the evidence in this case and from those instructions.

The burden is upon the People to produce such evidence as convinces your mind beyond a reasonable doubt of the truth of the charge made by the People; and this respondent is presumed to be innocent, and that presumption abides and remains with him throughout the trial of this case, and until it shall have been removed by evidence produced by the People which convinces your mind he is guilty beyond a reasonable doubt. And in this Charge, where I make reference to the evidence which the People shall produce to warrant conviction, I mean evidence which convinces your mind beyond a reasonable doubt, whether or not I have in each instance repeated the use of the words "reasonable doubt."

By reasonable doubt is meant a fair doubt, just what the words imply. It is such a doubt that after a careful review of all the testimony, you cannot say that you have an abiding conviction to a moral certainty of the Respondent's guilt. It does not mean a captious or fictitious doubt, or possible doubt, but a reasonable doubt, a fair doubt.

The credit of witnesses is also for you to determine, you will give to each witness such credit as you think the witness is entitled to under all the circumstances in this case. You should have regard for the appearance of the witness upon the witness stand, his or her age and understand nis or her candor or want of it, his or her bias or prejudice, if any exists, his or her interest in the result of the case, his or her feelings or sympathy, if any you find, that may sway or alter the judgment or testimony of the witness. These are things which are to be taken into consideration by you in determining what amount of credit you should give to each witness and you are to apply the same rules to the testimony of the respondent as you do to the testimony of other witnesses; but in considering the testimony of any witness, you have a right to consider whether or not such witness is materially or vitally prejudiced in any way or interested in the outcome of the case to such an extent as might influence any such witness to testify in the manner most favorable for the side of the case upon which he or she is a witness.

You are the sole judge of the credit you will give to the testimony of each witness, and you may refuse to believe and may disregard the testimony of any witness sworn, if for any reason, applying the suggestions I have just given you, you have reasonable doubt as to the truth of such testimony; but you should not disregard the testimony of witnesses unless you are able, under the foregoing instructions and your conscientiously fair judgment to do so.

You should not let sympathy or prejudice enter into your verdict, that is, if you are satisfied beyond a reasonable doubt from all the evidence here introduced, that this respondent is guilty, you should not let any sympathy for him because you might think he would be punished, sway your better judgment so as to prevent your bringing

in a verdict of guilty, and on the other hand, if you are not convinced of the guilt of the Respondent, beyond a reasonable doubt, you should not let any prejudice, if any, you might have against the Respondent, or the nature of the charge, if you should in any way be prejudiced against him, cause you to bring in a verdict of guilty.

In short, under your oath as Jurors, it is incumbent upon you to do your duty as you find the right or wrong, from all of the evidence introduced in this case and from these instructions, and without fear, prejudice or sympathy. You will apply these instructions relative to the laws of this State in determining the question of guilt or innocence, to the evidence in the case that has been given you from the witness stand and base your verdict as you determine and believe it, determine from the evidence, applied to these instructions, who is in the right and who is in the wrong.

As you already know, the People Charge in the Information that the Respondent Stanley Kregger murdered Anna Kregger on February 6, 1950. This charge of murder in the first degree includes a charge of murder in the second degree and a charge of manslaughter. I will define these for you at this time.

Murder in the first degree is the unlawful killing of a human being by another human being, with malice aforethought, and in order to be guilty of murder in the first degree, the act must be premeditated.

Murder in the second degree must be with malice, but without premeditation.

Manslaughter is the unlawful killing of a human being without malice, and as naturally follows, without premeditation.

Murder is defined as where a person of sound memory and discretion wilfully and unlawfully and unreasonably kills any human being, against the peace and dignity of the People of the State of Michigan, with malice aforethought, either express or implied.

At this point I want to pause and say a word about the Special Defense of Insanity. Each of you jurors were examined as to whether or not the fact that the Respondent had given notice that he intended to claim that defense, would be held against him, the mere fact that he had given that notice. I say to you Members of the Jury no testimony has been introduced in this case on that issue, so you should not give it any further consideration—it is not an element in this case. Dismiss insanity, or notice of plea of insanity from your mind, there was no testimony on it, that is not before you to pass upon, and you need not consider it further, it is out of the case and has no place in your deliberation whatsoever.

When one, without cause, inflicts a wrong upon another, we call him wicked and malicious. So when one, without any legal provocation, justification or excuse, intentionally kills another, he is called a murderer. The law implies from an unprovoked, unjustifiable or inexcusable killing the existence of that wicked disposition which the law terms malice aforethought. Thus if the Respondent in this cause intentionally killed Anna Kregger without provocation, justification or excuse, he would be guilty of murder in the first degree.

If you come to the conclusion that the defendant is guilty of murder, it will be your duty to determine whether he is guilty of murder in the first degree or guilty of murder in the second degree.

In order to convict the respondent Stanley Kregger of murder in the first degree, you must be satisfied beyond a reasonable doubt that he intended to kill Anna Kregger and that the killing was wilful, deliberate and premeditated.

It is not necessary that any particular time should have elapsed between the forming of the purpose and the intention to kill, and the killing. If the respondent had, previous to the killing of Anna Kregger determined to kill her, and to carry out his determination, wilfully and deliberately killed her, he would be guilty of murder in the first degree.

If the killing was done under a sudden, malicious impulse, but without premeditation, then the defendant would be guilty of murder in the second degree. If you have previously found that he is guilty of murder, beyond a reasonable doubt, but are not satisfied beyond a reasonable doubt that the killing was murder in the first degree, your verdict would then be "guilty of murder in the second degree" if you find him guilty of murder at all.

The instrument with which the killing was done may be taken into consideration. If inflicted with a deadly weapon, the provocation must be great to reduce it to manslaughter. The amount of resentment must bear a reasonable proportion to the provocation, to reduce the offense to manslaughter. To make it manslaughter, it is also necessary that the killing be done immediately upon the happening of the provocation. If sufficient time elapsed for passion to subside and reason to interpose, then the killing would be deliberate and the crime is murder, no matter how great the provocation.

So, I say to you, members of the Jury, that if the people have satisfied you beyond a reasonable doubt that the respondent planned or premeditated the killing of Anna

Kregger, or if you find beyond a reasonable doubt that the respondent inflicted wounds upon Anna Kregger, and that as a positive result thereof she died, then you would find the respondent guilty of murder in the first degree, and you would so report your verdict.

On the other hand, if you find beyond a reasonable doubt that Anna Kregger died as a result of the wounds inflicted by the respondent, then if the killing was done under a sudden malicious impulse, but without premeditation, then the respondent would be guilty of murder in the second degree. If you find beyond a reasonable doubt that the respondent is guilty of murder, but are not satisfied beyond a reasonable doubt that the killing was murder in the first degree, your verdict will then be "guilty of murder in the second degree."

If the killing is committed without premeditation, and if done without either malice or premeditation, then the killing would be manslaughter.

I will further endeavor to distinguish between murder in the first degree and murder in the second degree. The difference betwen murder in the first degree and murder in the second degree is that in murder in the first degree there must be premeditation and deliberation.

Murder in the second degree is where there is malice, but which arises of a sudden, previous to the killing, where one suddenly forms malice and intent to kill. In such a case it would be malice aforethought, but not premeditated and calculated malice and the offense would then be murder in the second degree.

I will now endeavor to distinguish between murder and manslaughter: Manslaughter is distinguished from murder in this: that the element of malice, express or implied which is the essence of the charge of murder, is absent.

To constitute murder in the first degree, the killing must be perpetrated and committed with malice aforethought.

To constitute murder in the second degree, the killing must be committed with malice aforethought. In the term malice is included not only anger, hatred and revenge, but every other unlawful and unjustifiable motive. It is not confined to particular ill will against the deceased, but is intended to denote an action flowing from a wicked and corrupt motive; but malice may be implied from the doing of any deliberate or cruel act against another, and the time within which the purpose was formed is immaterial so long as it exists at any time before the act, so as to be its moving cause.

In other words, manslaughter is the unlawful killing of a human being without malice, and without premeditation.

The law presumes that every person unless relieved by some disability as hereinafter mentioned, contemplates and intends the natural, ordinary and usual consequences of his own voluntary acts, unless the contrary appears from the evidence, and if a man is shown by the evidence, beyond a reasonable doubt, to have killed another by an act, the natural and ordinary consequences of which would be to produce death, then it will be presumed that the death of the deceased was designed by the slayer, unless the facts and circumstances of the killing or the evidence, creates a reasonable doubt whether the killing was done purposely. When a man assaults another with, or uses upon another, a deadly weapon in such a manner, that the natural, ordinary, probable use of such deadly weapon in such manner would be to take life, the law presumes that such person so assaulting intended to take life. A deadly weapon has been defined as an instrument reasonably calculated and lifely to produce death, or serious bodily injury from the manner in which it is used.

Murder may be and often is committed without any specific intent or actual intention of killing. It is not necessary in all cases that one charged with murder must have intended to take the life of the person he slays by his wrongful act, if the intent with which he acted shall be equivalent, in legal character, to a crime purposely aimed against human life.

If, in this case, you find the respondent attacked Anna Kregger, intending to inflict upon her some great bodily harm but less than the crime of murder, and, from the nature of the weapon and the manner in which it was wielded, an injury must have reasonably been expected to follow which would involve serious consequences to life, to the life of Anna Kregger, then if she died as a result of the injuries thus inflicted, the killing would be murder. In this case the Respondent Mr. Kregger has been a witness before you, as he had a right to be, and you have a right to weigh his testimony and give it such credit as you think it fairly entitled to. You have a right to take into consideration in weighing the testimony, his relation to the offense charged in the Information. In the beneficience of our modern Statutes in this State, one on trial for crime is now allowed to testify under oath in his behalf. His interest in the result of the trial, that would formerly preclude his testifying, now has not that effect, and it is the duty of the jurors to give his testimony such weight, as in view of all the facts and circumstances shown, it shall appear to them to be entitled to. His interest is to be considered only so far as it affects his credit. His testimony is to be scanned and treated the same as that of other witnesses. If rational, natural and consistent, it may outweigh the testimony of other witnesses. If inconsistent with established facts or his prior statements, you may treat it the same as you would that of any other witness whose testimony is thus defective.

I might pause at this time to say that there was testimony before the Jury of previous conviction of Mr. Kregger of other criminal offenses. Those were proper in Court to be brought out before you, but they only go to his credibility, they only go to the weight you are to give his testimony. The fact that he may have been convicted of previous offenses can not, in and of itself be held against him as far as his guilt in this case or crime is concerned, it only goes to his credibility, so that you may have that testimony to know something about him in order to better weigh his testimony, but that in itself is not evidence against him as far as this crime is concerned, it is only received to assist you in knowing the man, knowing more about him and knowing the amount of weight you are to give the testimony that he has given before you.

With reference to the statement so-called to have been made by Anna Kregger, this so-called dying declaration, if you find it was made knowingly, with the belief that death was imminent, then you will consider it in connection with the other evidence in this case, giving it the force and effect that you think it is fairly and reasonably entitled to. But, unless you find that it was made understandingly, and with the belief of imminent death or consciousness of imminent death, then you will disregard it, because the law allows a so-called dying declaration to be considered in a case of this kind only when made in the belief that death is imminent. It is that consciousness of approaching death that is said to supply the sanctity of an oath that is administered to a witness in open Court.

Further along that line if you find that such a statement was made and made in the presence of the Respondent in this case Stanley Kregger, and if you find the statements were made against his interest, then it becomes your duty to determine whether or not he heard these statements,

and if he heard the statements and did not object to them, then that might be considered by you as evidence against him. After considering all the other facts and circumstances, of course if you find that he did not hear the statements, then he would not be in position to object to them, or to make any reply to them. I only speak of it so that it might aid you if that question comes up in your deliberations.

Something has been said about motive in this case. Motive is that which excites or stimulates to action. Motive is never an essential element in a crime. It is only material from the fact that tends to show the state of mind when the act was committed. It is never necessary to show a bad motive to convict a man of a crime, and, on the other hand, the criminal responsibility for an illegal act wilfully committed. The fact that a criminal act is wilfully done with an innocent or laudable motive will not excuse it. When an act is defined by law to be illegal or criminal, every one is punishable who does the prohibited act without some legal justification or excuse furnished by the action and the circumstances, without regard to his real motive and intention.

The Jury is instructed that proof of a motive to commit the crime is not indispensable nor essential to conviction. While a motive may be shown, as a circumstance to aid in fixing the crime on the respondent, yet the prosecution is not required to prove a motive on the part of the respondent in order to convict, and the Jury would be justified in inferring a motive from the commission of the crime itself, if the commission of the crime by the respondent is proved beyond a reasonable doubt, as required by law, that there were no extenuating circumstances.

You are further instructed that in no case is it necessary, in order to establish the crime charged, that there

be direct proof of defendant's guilt by eye witnesses who were present and saw him commit the crime, but in criminal as well as in civil cases, the evidence may be, and frequently is, not direct, but circumstantial; in fact in criminal cases the guilt of the defendant, if shown at all, is frequently shown by the latter kind of evidence; that is, by proof of such facts and circumstances as establishes the guilt of the defendant. When the evidence in a case consists of a chain of well authenticated and proven circumstances, it is often more convincing and satisfactory, and gives a stronger ground of assurance of the defendant's guilt, than the direct testimony of witnesses unconfirmed by circumstances. But to justify the inference of guilt from circumstantial evidence, the facts proven from which it is asked that the guilt of the defendant be inferred, must be consistent with each other, and must not only clearly point to his guilt, but must be inconsistent with any other reasonable hypothesis upon which his innocence may be maintained. Where the prosecution relies upon circumstantial evidence alone to establish the conviction of a person of crime charged, the jury must be satisfied from the evidence beyond a reasonable doubt that the crime charged has been committed by some one, in the manner and form as charged in the information, and further that all the circumstances proven are consistent with defendant having committed the crime, and that the facts and circumstances proven are such as to be inconsistent with any other rational conclusion and satisfy the jurors beyond a reasonable doubt that the defendant is the person who committed the crime charged.

In some cases it is impossible by any description, however graphic, to explain technical or scientific matters or things so as to enable a person not trained in such matters, to comprehend or understand their special significance or

application to the issues before the Court. In order to assist the jurors and the Court to fully understand such matters, and to correctly apply them to the facts in issue, the testimony of certain expert witnesses has been received. When a scientific or expert witness testifies you should treat it in the same manner as any other testimony in this case. The mere fact that it was offered by experts does not compel you to take their testimony in preference to any other, but you should give such testimony the same consideration, everything else being equal, as that of any other witness, other things being equal.

Some testimony has been introduced as to statements made to the officers, from which it is claimed respondent made certain admissions regarding his connection with the offense charged in the information. As to this branch of the testimony, it is necessary for you to inquire and determine, before you can consider it with reference to the guilt of respondent; first, whether such statements or admissions were freely and voluntarily made. If you find, even though they were made, that they were not his free and voluntary statements, they cannot be considered by you. If you find that such statements were made under fear, compulsion, deceit, threat or duress, or, if they were made upon any inducement, promise, hope or expectation that it would not be voluntary confessions and should not be considered by you. Or if you find they were not intelligently made—that is, that his memory or mind was so disordered and confused that he did not realize what he said, then they cannot be considered by you. I have said you must find whether they were intelligently made—that is, whether or not he knew and understood what he was saying. If the condition of his mind was such because of loss of memory or disorder of memory, or mental confusion, and such impairment of memory had extended to that degree that he

did not realize what he said, then it was not his intelligent statement and could not be considered by you; but if he did mentally appreciate and realize what he said, then it would be his intelligent statement, so far as a question of his mind is concerned, and could be considered by you under all the instructions I have given you in this case.

The voluntary and intelligent confessions of a prisoner are received in evidence of guilt upon the presumption that a person will not make an untrue statement against his or her own interest. The evidence of confessions of guilt is to be received with great caution, because of the danger of mistakes from the misapprehension of the witness in detailing the confessions, the failure of the witness to use the same words, and the infirmity of memory; also because the prisoner may not have expressed the meaning which he intended to convey, and it should be remembered and considered that the prisoner is often oppressed by the calamity of the arrest and the fact of being in custody of the officers. Subject to these cautions in receiving and weighing evidence of confession, it is generally agreed that deliberate, intelligent and voluntary admissions of guilt are among the most effectual proofs. The degree of credit to be given to the claimed admissions in this case is for you, under the evidence in the case and the manner in which they were made. Look over the testimony with reference to the alleged admissions and statements and determine, if they were made, and if made, whether or not they were made deliberately, intelligently, and voluntarily on the part of the Respondent.

If a person accused of a crime voluntarily admits the accusation, that is very strong evidence of his guilt, because it would be unnatural for a person accused of a crime to voluntarily admit the accusation, knowing it would be used against him, unless he committed the crime; and

the only exception to that rule would be where a person is so coerced, or under such duress or restraint, as to make a confession or admission involuntarily, and not of his own free will. The Court has permitted the evidence in this case to come to the Jury, that you may take it and analyze and weigh it, to see what is the truth of the matter; and, if the confession or admission was made, for what purpose, with what motive, and if it was true. You have a right to take into consideration the testimony of the Respondent on the branch of the case, as upon all other branches of the case.

In this case the parties have been represented by Counsel of unusual ability—Mr. Powell has been reporting for me for, on and off for eight and one-half years, I think this is the second or third time he has ever heard me say it—I appreciate the courtesies you men have extended to the Court. You have been very courteous, you have left no stone unturned that I can see, to present this case fully to the Jury, I do not know of anything that has been held out, but what has been fully revealed. It has been an unpleasant duty of the Court at times to rule against you, you have accepted the rulings of the Court, there has been no vicious, no personal feeling in the matter, and in fact along that line I think it is a good illustration of the way a case ought to be tried—I congratulate you attorneys on it.

These attorneys have been untiring in their efforts to bring before you such things as will assist you in your decision upon the issues submitted. In their zeal in behalf of their clients during the progress of the trial, some remarks or statements have been passed back and forth, some of which have been stricken from the record as having no place in the trial. In considering the case you should absolutely put aside and disregard all such remarks and not allow them in the slightest degree to influence your

verdict. Counsel, during their argument, have ably analyzed the issues and facts submitted for your consideration and have materially assisted you in your deliberations which are to follow. It is proper for you to consider the argument in your discussion in the Jury room in analyzing the issues and weighing the claims of the parties, but your verdict must be based, not upon such argument, but solely upon the testimony submitted for your consideration, and from these instructions.

In your Jury Room you should not refer to, discuss or consider anything in connection with this case except the evidence received upon the trial. All extraneous matters, statements and suggestions should be carefully discarded by you and you should base your verdict solely upon the evidence and be guided by these instructions as to the law. You should take the case and decide it according to the testimony given you in the case. You are not to indulge in supposition upon which no evidence has been given or offered. You have no right to trust your own opinion in the case unsupported by proof. Jurors have no right to indulge in surmises or conjectures on subjects concerning which no evidence has been offered. They are bound to the testimony for their sole guide.

If you believe from the testimony, and beyond a reasonable doubt, that the Respondent at the time and place charged in the Information, wilfully and unlawfully killed Anna Kregger, with malice aforethought, either express or implied, and that the killing was premeditated, your verdict would be "guilty of murder in the first degree."

If you do not find him guilty of murder in the first degree, but if you do find beyond a reasonable doubt that the respondent killed Anna Kregger with malice, that is without any legal justification, but that the killing was not premeditated, and was done maliciously under a sudden

impulse, then your verdict would be "guilty of murder in the second degree."

If you do not find him guilty of murder in the first degree, or guilty of murder in the second degree, then if you find that the killing was unlawful, but without malice and without premeditation, but was done under the influence of violent passion, resulting from adequate and sufficient provocation, which for the time overwhelmed the reason of the Respondent, and there was not sufficient time for cooling, then your verdict would be "guilty of manslaughter."

On the other hand, if you find that the People have failed beyond a reasonable doubt to prove any of these offenses charged against the Respondent, then your verdict would be "not guilty."

Now Members of the Jury, upon retiring to the Jury Room your first duty is to elect a Foreman. The fact that Mr. Zinn is No. 1 does not automatically make him foreman—any member may be your foreman. First discuss the facts, then discuss the law as given to you by the Court, then arrive at your verdict and return to the Court Room and announce to the Court, your Foreman speaking for you. You will be asked if you have arrived at a verdict and if so who will speak for you, your Foreman will stand up and say "We have arrived at a verdict and I will speak for the Jury", then he will be asked "what is your verdict". If you find that the defendant is guilty of murder in the first degree your Foreman will announce that verdict. If you determine he is guilty of murder in the second degree you will return to the Court Room in the same manner and announce second degree murder. If you find he is not guilty of murder in either first or second degree, but guilty of manslaughter, then you will return to the Court Room and announce to the Court, that you speak for

the Jury, and that the verdict is manslaughter. Fourth: If you find the people have not proven beyond a reasonable doubt any of the three charges, then it would be equally your clear duty to return to the Court Room, again your Foreman speaking for you, and announce "we find the Respondent is not guilty."

Mr. Bristol do you think of anything further? Any further instructions?

Mr. Bristol: Only one thing, that is the thirteenth Juror.

The Court: Do counsel for the Respondent care to make further suggestions?

Mr. Ashdown: No, your Honor.

The Court: Thank you. Mr. Clerk, will you put all thirteen names of Jurors in the box and draw out one name, that will be excused?

(The Clerk conforms with instructions.)

The Clerk: Juror No. 3, Duane Houck.

The Court: You are excused Mr. Houck. You are at liberty to go.

(Thereupon the Clerk swore an Officer.)

The Jury will now retire in custody of the Officer and begin your deliberations. When you are in the Jury Room you are at liberty to discuss the case to the fullest extent between yourselves, and when you have arrived at a verdict, signify that to the Officer. The Jury may retire.

STATE OF MICHIGAN—In the Circuit Court for Branch County

People of the State of Michigan v. Stanley Kregger	File No. 1902

SETTLED CONCISE STATEMENT OF FACTS

Stanley Kregger was charged with murder in the first degree in the killing of Anna Kregger, his wife. On September 21, 1950 he was found guilty of murder in the first degree by a jury and was sentenced to life imprisonment by the Honorable Charles O. Arch, Circuit Judge for the County of Branch who presided at the trial. Notice of special defense of insanity was timely made and filed by defense attorneys.

This case was previously appealed to the Michigan Supreme Court and the conviction of Stanley Kregger was affirmed.

Stanley Kregger is now appealing to the Supreme Court upon the sole question as to whether or not the Judge erred in his Charge to the Jury concerning the special defense of insanity and the evidence produced thereon.

On January 29, 1950 Anna Kregger was shot by a gun held by her husband Stanley Kregger. The testimony of the witnesses concerning the circumstances surrounding the shooting is hereinafter set forth.

STANLEY KREGGER

Stanley Kregger testified on direct examination (Page 229 Transcript) that a couple of weeks prior to January 29, 1950 his wife refused to talk to him, that he did not know why she didn't talk to him; that it lasted for a week or two at that time; that his health was not good at the time and when she refused to talk to him it made him feel worse, that he became nervous and then more nervous; that he could not sleep very well; neither could he eat very well; that he had no appetite; that he attempted to correct the situation with his wife (Transcript page 229).

Q. Will you turn to the jury and tell them exactly what happened and why?

A. I asked her why she acted like she did. She refused to talk to me and how come it happens to the extent like you have, she says "I don't know." I says "Don't you love me any more?" She says "How can I the way you manage things." She says "You always want your own way." So I felt awfully bad. I went into the closet of the bedroom and got the gun, see, I says "If that is the way you feel about it I am going to end it all and get out of your way," and she jumped up and took hold of the gun, and said "put the gun away," and she was all right for a few days, probably a week, then she up again, did not speak.

Kregger further testified (Pages 234, 235, 236 Transcript) that when he got the gun in front of his wife a couple weeks prior to January 29th it wasn't loaded but that he had shells for it. Further testifying:

Q. At the time you went to get it that day, when you say you was feeling so bad, why did you do that?

A. Well, I thought I could bluff her into not getting so mean toward me.

Q. What do you mean by that?

A. Well, she would not agree or anything that I would say, she wanted to rule things.

Stanley Kregger further testified that he felt pretty badly; that he told her that day that he would get himself out of her way but that he did not really intend to do that, that he thought he could tell her that and make her believe it and that she would then change her disposition; that things got along better for a while; that a few days later she wanted him to go to a doctor and he told her he didn't feel well enough to go and that she should get the doctor; that subsequently Dr. Culver came out to see him and he started taking medicine left by Dr. Culver; that this was somewhere around the 20th, about three or four days after this incident; that from that day on up until the 29th he was taking treatment and medicine from Dr. Culver.

That on Sunday, January 29th, they had an argument over the sale of a cow (page 242 Transcript); that his wife wanted to wait until the cow had a calf before selling her and he figured it would be more profitable to sell the cow before she had a calf; that his wife said "You do as I tell you." She said "You always want your own way" (page 242 T.). Kregger said he wasn't used to her answering him that way, and it made him feel awfully bad; that she had not been speaking to him for a few days before that; that later he opened the door to the closet because his clothes and shoes were in there (page 245 T.); that that was the first time the thought of the gun crossed his mind that morning; that by seeing the gun he had an impulse to pick it up and he was going to try to bluff her again like he did the first time; that it did not occur to him that

he had loaded the gun the day before (page 245 Transcript). That he walked out to the kitchen with the gun and as he walked in the door of the kitchen he said to her "You don't seem to want to agree on anything I say, that I have got a notion to do. I am going to make the end of it and get out of your way." That he was going to bluff her the same as the first time; that by getting out of her way he meant by blowing his head off; that this bluff had worked before; that is what he wanted her to think that he was going to do; that he expected her to conduct herself differently after that.

That after she was shot (Page 250 Transcript) he said "You are hurt awfully bad. I will have to get a doctor." He said "I feel so bad about it I have got a notion to blow my own head off." "Well," she said "Don't do that. What would become of me?" Then she said "first to get the doctor." That we went to get Dr. Culver; he was awfully nervous; he could hardly drive the car; once he went off the road (page 253 T.).

After the doctor came to the house, the doctor asked him to get an ambulance. He said "Doc, I am too nervous to drive. Could you get it?" (T. 255)

FROM STANLEY KREGGER'S STATEMENT PEOPLE'S EXHIBIT No. 7

From Stanley Kregger's Statement (page 335 T.) Kregger stated that approximately two weeks prior to the shooting his wife was telling him that he did not love her; that he had the gun in his hands and he told her that she always accused him of not loving her. He said "Well, I do love you." He said, "You keep saying that I don't. I will make the end of it." Stanley Kregger said he meant by that that he would shoot himself but his wife grabbed the gun. Stanley Kregger said (T. 336) that his wife tried to rule too much.

He had threatened to commit suicide twice before (T. 341). He thought that she did not care about him; that she did not love him any more (People's Exhibit No. 7 Transcript).

On January 21 his nerves were jumpy and his wife wanted to get the doctor to see what was wrong. She got the doctor and he left Stanley Kregger some medicine.

He had no intention of getting the gun when he walked into the house (T. 347). The day of the shooting he was standing around washing up and combing his hair and he thought about the fact that his wife did not care for him, that she did not love him any more, that she was sarcastic about things. He thought he could scare her and she would let up and would not be so harsh with him (T. 347-348). She wanted to rule too much (T. 342); he wanted her to give up a little (T. 342), to stop ruling the roost (T. 343). Then all of a sudden the thought came to him to get the gun (T. 347). He was going to threaten her in order to bluff her into giving up, to stop ruling the roost (T. 343).

After his wife was shot she said "Get the doctor" and he said, "God, after all what I did if I go get the doctor now they will think I did it intentionally. I have a notion to blow my own head." She said, "Don't do it. Get the doctor," and finally talked him out of blowing his own head off (T. 339).

ANNA KREGGER

In the statement of Anna Kregger taken in Coldwater, Michigan, January 31, 1950, People's Exhibit No. 6, (page 351 Transcript), she testified that Mr. Kregger had threatened her before, that he was awfully nervous, that on the day of the shooting he said to her "you and I are going together."

JOHN BUCHOLTZ

John Bucholtz testified for the prosecution on direct examination (page 172 of Transcript) that he was the son of Anna Kregger; that he lived in the home occupied by them; that after the funeral he had a conversation with Stanley Kregger at the jail; that he asked Stanley Kregger why he did it and Stanley answered he did not know; that he asked him how it happened and Stanley told him he did not know and that he asked him about the gun and again Stanley answered he did not know.

DR. CULVER

Dr. Culver testified for the Prosecution on direct examination (pages 41 and 42 of Transcript) that he had known Stanley Kregger and Anna Kregger for approximately two years; that approximately a week before January 29, 1950 he was at his office in Bronson taking care of his patients when the door bell rang; that his wife answered it; that his home is in the same place with the office, the same building, that they have an apartment upstairs; that his wife answered the bell and notified him that there was a woman at the door to see him. That she did not want to come into the office, particularly because there were people waiting there so he went to the door and it was Anna Kregger at the door; that she was very upset, crying and wringing her hands and was almost hysterical.

That as a result of what Anna Kregger told him he went to the Kregger home; that Stanley and Mrs. Kregger were there; that they sat down in the dining room and he proceeded to have a talk with Stanley and his wife; that after talking with Stanley and his wife he attempted to make a mental examination of Stanley Kregger; that he prescribed treatment for Mr. Kregger at that time.

That on January 29, 1950 Stanley Kregger came to his home and asked him to come to see his wife; that he arrived at the home and saw that the wife needed hospital attention and asked Stanley Kregger to get an ambulance. That Stanley Kregger told him that he was too nervous and that the doctor better go get the ambulance (Page 46 T.).

DR. E. M. WILLIAMSON

Dr. E. M. Williamson testified that he is a physician and psychiatrist; that he was requested by the State Department of Mental Health to examine Stanley Kregger and that he did so on March 11, 1950.

Dr. Williamson testified, upon questioning by Mr. Bristol, that in his opinion from the history, neurological and psychiatric examination that Stanley Kregger was legally sane and responsible for his acts; that he knew the difference between right and wrong.

DR. FRANK A. ANDREWS

Dr. Frank A. Andrews testified that his specialty is psychiatry; that he was called by the court to examine Stanley Kregger; that he did examine Stanley Kregger on March 11, 1950 in the presence and together with Dr. Rennell and Dr. Williamson (Page 210 Transcript).

Dr. Andrews testified upon questioning by Mr. Bristol that in his opinion Stanley Kregger was not suffering from mental disease or defect which would affect his criminal responsibility and that he was capable of helping his lawyer in his defense; that he had mental capacity to know and distinguish between right and wrong.

DR. EDWIN J. RENNELL

Dr. Edwin J. Rennell testified (page 205 Transcript) that he is a physician with a specialty of psychiatry; that he examined Stanley Kregger on March 11th at Branch County Jail having been designated by the State Hospital to do so and that he concluded that at that time on March 11, 1950 that Stanley Kregger was suffering from no mental disease or defect which could affect his criminal responsibility; that he was capable of understanding the nature of his proceedings and capable of assisting his counsel with his defense.

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

STATE OF MICHIGAN—SUPREME COURT

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the sixth day of June in the year of our Lord one thousand nine hundred and fifty-seven.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, John D. Voelker, Harry F. Kelly, Leland W. Carr, Associate Justices.

The People of the State of Michigan, Plaintiff, v. Stanley Kregger, Defendant.	47,408½

In this cause an application is filed by defendant for leave to appeal from the judgment and sentence of the Circuit Court for the County of Branch and nothing in opposition thereto having been filed, and due consideration thereof having been had by the court, It is ordered that the application be and the same is hereby Denied.

State of Michigan—ss.

I, Hugh H. Carpenter, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 7th day of June in the year of our Lord one thousand nine hundred and fifty-seven.

Hugh H. Carpenter,
Clerk.

(Seal)

ORDER DENYING MOTION FOR RECONSIDERATION

STATE OF MICHIGAN—SUPREME COURT

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the fourth day of September in the year of our Lord one thousand nine hundred and fifty-seven.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, John D. Voelker, Harry F. Kelly, Leland W. Carr, Associate Justices.

The People of the State of Michigan, Plaintiff, v. Stanley Kregger, Defendant.	47,408½

In this cause a motion for reconsideration of the order heretofore entered herein on June 6, 1957, denying leave to appeal, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that the order heretofore entered herein as aforesaid stand affirmed.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true copy of an order entered in said court in said cause; that I have compared the same with the original, and that

it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 14th day of September in the year of our Lord one thousand nine hundred and fifty-seven.

Donald F. Winters,
Clerk.

(Seal)